

UNITED STATES DISTRICT COURT
DISTRICT OF ILLINOIS
CENTRAL DISTRICT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO.
)	
MGP INGREDIENTS OF ILLINOIS, INC.)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

NATURE OF ACTION

1. This is a civil action brought against MGP Ingredients of Illinois, Inc. (MGP or Defendant), pursuant to Section 113(b) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(b), for alleged environmental violations at an ethanol plant owned and operated by Defendant in Pekin, Illinois. As set forth below, Defendant has been and is in violation of EPA's regulations implementing the following CAA statutory and regulatory requirements applicable to the ethanol industry: Part C of Title I of the Act, 42 U.S.C. § 7470-7492, Prevention of Significant Deterioration (PSD); New Source Performance Standards (NSPS), 40 C.F.R. Part 60, Subparts Kb and VV; and the Illinois state implementation plan (SIP) which incorporates and/or implements

the above-listed federal regulations.

2. The United States seeks an injunction ordering Defendant to comply with the above statutes and the regulations promulgated thereunder, and civil penalties for Defendant's past violations.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Section 113(b) of the CAA.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c) and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because the Defendant is located and is doing business in this district.

NOTICE TO STATE

5. Actual notice of the commencement of this action has been given to the State of Illinois as required under Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANT

6. MGP owns and operates a chemical manufacturing facility which produces ethanol in Pekin, Illinois (the MGP facility).

7. MGP is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e), and the federal and state regulations promulgated pursuant to these statutes.

8. The ethanol manufacturing process at the MGP facility results in emissions of significant quantities of regulated air

pollutants, including nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM and PM₁₀), volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). The primary sources of these emissions are the feed dryers, fermentation units, ethanol load-out systems, and fugitive dust emissions from facility operations, including roads.

STATUTORY AND REGULATORY BACKGROUND
CLEAN AIR ACT REQUIREMENTS

9. The Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

10. Prevention of Significant Deterioration. - Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (NAAQS or ambient air quality standards) for certain criteria air pollutants. The Act requires that primary NAAQS be adequate to protect the public health, and that secondary NAAQS be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

11. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides

for the attainment and maintenance of the NAAQS.

12. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area for that pollutant; one that does not is classified as a "non-attainment" area.

13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the Prevention of Significant Deterioration or "PSD program."

14. Section 165(a) of the Act, 42 U.S.C. § 7475(a),

prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued and any air pollution controls required by the permit have been installed and are in operation. Section 169(1) of the CAA, 42 U.S.C. § 7479(1), defines "major emitting facility" for certain listed stationary sources, such as chemical manufacturing plants, as a source with the potential to emit 100 tons per year (TPY) or more of any criteria air pollutant.

15. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that the proposed construction or modification will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental increase.

16. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit and install and operate best available air pollution control technology. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation

under the Act. "Significant" is defined at 40 C.F.R.

§ 52.21(b)(23)(i) in reference to a net increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 TPY of VOCs; for CO, 100 TPY; for NO_x, 40 TPY; for PM, 25 TPY, and for PM₁₀, 10 TPY.

17. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area must install and operate best available control technology (BACT) for each pollutant subject to regulation under the Act that the source would have the potential to emit in significant quantities.

18. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated by EPA pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

19. A state may comply with Section 161 of the Act either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 52.738 and must be approved by EPA as part of the SIP.

20. New Source Performance Standards. - Section 111 of the

CAA, 42 U.S.C. § 7411, requires EPA to promulgate standards of performance for certain categories of new air pollution sources (New Source Performance Standards or NSPS). Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA promulgated general regulations applicable to all NSPS source categories. Those general regulations are set forth at 40 C.F.R. Part 60 Subpart A.

21. EPA's NSPS regulations applicable to ethanol plants are contained in 40 C.F.R. Part 60, Subparts Kb and VV.

22. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes both injunctive relief and civil penalties. Under Section 113(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated thereunder, civil penalties may be assessed in amounts up to \$25,000 per day for each violation prior to January 30, 1997, up to \$27,500 per day for each violation from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurs after March 15, 2004.

FIRST CLAIM FOR RELIEF
PSD and NSR Requirements

23. Paragraphs 1 through 19 and 22 are realleged and incorporated by reference.

24. At the MGP facility identified in Paragraph 6, MGP manufactures various products from flour and grain, including

fuel and beverage ethanol.

25. EPA and the Illinois Environmental Protection Agency (IEPA) have conducted an investigation of the MGP facility, which included review of permitting history and emissions data, and analysis of other relevant information concerning modification and operation of the facility. The United States alleges the following based on the results of the EPA and IEPA investigations, information and belief:

26. Ethanol plant operations at the MGP facility result in emissions of significant quantities of criteria air pollutants, including NOx, CO, PM, VOCs and a number of HAPs. The primary sources of these emissions are the feed dryers, fermentation units, ethanol load-out operations, and fugitive dust from facility operations, including roads.

27. The MGP facility is a "chemical manufacturing facility" under Section 169(1) of the CAA, 42 U.S.C. § 7479(1), which defines "major emitting facility" for certain listed stationary sources as a source with the potential to emit 100 TPY or more of any criteria air pollutant. The MGP facility is a major emitting facility with the potential to emit in excess of 100 TPY of VOC, PM, and CO, which are listed criteria air pollutants.

28. At all times relevant to this Complaint, the MGP facility was and is located in an area that was designated as "Class II" under Section 162(b) of the Act, 42 U.S.C. § 7472(b),

and that has attained the National Ambient Air Quality Standards for Ozone, of which VOC is a precursor, NOx, PM, and CO, under Section 107(d) of the Act, 42 U.S.C. § 7407(d).

29. At all times relevant to this Complaint, and on numerous occasions since commencement of operations, MGP has failed to fully and accurately identify the emissions from its facility of one or more criteria pollutants.

30. Since construction of the facility, MGP has been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding SIP, by failing to undergo PSD review, by failing to obtain all appropriate permits, and by failing to install the best available control technology for the control of VOC, CO, NOx, and PM, from all feed dryers, fermentation units, gas boilers, cooling cyclones, fugitive dust emissions from facilities, and ethanol load-out operations.

31. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations are likely to continue.

32. Under 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated thereunder, MGP's violations set forth above subject it to injunctive relief and to civil penalties of up to \$25,000 per day for each violation prior to

January 30, 1997, up to \$27,500 per day for each violation from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurs after March 15, 2004.

SECOND CLAIM FOR RELIEF

New Source Performance Standards

Standards Of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

33. Paragraphs 1 through 8 and 20 through 22 are realleged and incorporated by reference.

34. The MGP facility is a facility for synthetic organic chemical manufacturing which was constructed or modified after January 5, 1981. The MGP facility is an "affected facility" as defined by Part 60, Subpart VV, 40 C.F.R. § 60.480, which is subject to the leak detection, monitoring, and repair requirements set forth in 40 C.F.R. §§ 60.482-1 to 60-489.

35. On one or more occasions since December 31, 1996, MGP failed to accurately monitor the subject VOC valves and other components at its ethanol plants, to report the VOC valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner, in violation of one or more requirements of 40 C.F.R. §§ 60.482-1 to 60-489.

36. Unless restrained by an Order of the Court, MGP's violations of the Act and the implementing regulations are likely to continue.

37. Under 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C.

§ 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated thereunder, MGP's violations set forth above subject it to injunctive relief and to civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, up to \$27,500 per day for each violation from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurs after March 15, 2004.

THIRD CLAIM FOR RELIEF
New Source Performance Standards
Standards of Performance for Volatile Organic
Liquid Storage Vessels

38. Paragraphs 1 through 8 and 20 through 22 are realleged and incorporated by reference.

39. At the MGP facility, MGP has one or more storage vessels used to store volatile organic liquids that are "affected facilities" under 40 C.F.R. Part 60, Subpart Kb, with a capacity greater than or equal to 40 cubic meters and for which construction, reconstruction, or modification, as defined by 40 C.F.R. § 60.110b, was commenced after July 23, 1984. Each such affected facility is subject to the operational and emission limits, testing, and recordkeeping and reporting requirements set forth in 40 C.F.R. §§ 60.110b to 60-117b.

40. On one or more occasions since December 31, 1996, MGP failed to comply with the applicable requirements of Subpart Kb, in violation of one or more provisions of 40 C.F.R. §§ 60.110b to 60-117b.

41. Unless restrained by an Order of the Court, MGP's violations of the Act and the implementing regulations are likely to continue.

42. Under 42 U.S.C. § 7413(b), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated thereunder, MGP's violations set forth above subject it to injunctive relief and to civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, up to \$27,500 per day for each violation from January 31, 1997 through March 15, 2004, and up to \$32,500 per day for each violation that occurs after March 15, 2004.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order MGP to comply immediately with the statutory and regulatory requirements cited in this Complaint, under the Clean Air Act;

2. Order MGP to take such measures as the Court finds appropriate to mitigate the effects of MGP's violations;

3. Assess civil penalties against MGP for its violations of the Clean Air Act and applicable regulations, in amounts up to the per-day, per-violation limits set forth above; and

4. Grant the United States such other relief against MGP as this Court deems just and proper.

Respectfully submitted,

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